



2023/KER/77500

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

THURSDAY, THE 7<sup>TH</sup> DAY OF DECEMBER 2023 / 16TH AGRAHAYANA, 1945

CRL.REV.PET NO. 1993 OF 2006

AGAINST THE JUDGMENT DATED 31.03.2006 IN CRA 794/2003 OF COURT OF SESSION, 2<sup>ND</sup> ADDITIONAL - KOZHIKODE DIVISION MODIFYING THE JUDGMENT DATED 06.12.2003 PASSED IN CC 561/1998 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I, KOZHIKODE

REVISION PETITIONER/APPELLANT/ACCUSED:

ABDUL MAJEED,

BY ADVS. SRI.M.ASOKAN SRI.DEVAPRASANTH.P.J.

RESPONDENTS/RESPONDENTS/COMPLAINANT:

- 1 STATE OF KERALA PUBLIC PROSECUTOR, HIGH COURT OF KERALA.
- 2 SI OF POLICE TOWN POLICE STATION KOZHIKODE, REPRESENTED BY PUBLIC PROSECUTOR, , HIGH COURT OF KERALA.

ADV SANAL P RAJ - PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR FINAL HEARING ON 22.11.2023, THE COURT ON 07.12.2023 DELIVERED THE FOLLOWING:



**G.GIRISH, J.**

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**Crl.R.P.No.1993 of 2006**  
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**Dated this the 7<sup>th</sup> day of November, 2023**  
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**ORDER**

What is the scope and applicability of Juvenile Justice (Care and Protection of Children) Acts of 2000 and 2015, in revision, upon the conviction and sentence of a 49 year old person in respect of an offence committed by him in the year 1991, at the age of 17 years, when the Juvenile Justice Act, 1986 was in force? This exactly is the riddle to be resolved in this revision proceedings.

2. Desirous of getting a job at Saudi Arabia, Master Abdul Majeed, aged 17 years, manipulated the certified copy of the relevant page of his admission register, issued from the school, to make it appear that his date of birth is 05.04.1970 instead of 05.04.1974, since the emigration rules of Saudi Arabia permitted employment of persons aged 21 years and above only at



that time. Making use of the above manipulated document, he applied for passport on 24.07.1991, resulting in the consequence of getting entangled by the long arms of law. On the basis of a complaint preferred by the Passport Officer concerned on 03.06.1993, the criminal law was set in motion by the Police; and the above adolescent who is now the revision petitioner herein, along with another person who helped him in processing the passport application, was booked for the commission of offence under Sections 468 and 471 I.P.C and Section 12(1)(b) of Passport Act, 1967. After the completion of the investigation, the Sub Inspector of Police, Kozhikode Town Police Station laid the final report before the Judicial First Class Magistrate Court-I, Kozhikode in respect of the aforesaid offences alleged to have been committed by the petitioner and another person by name V.P.Athnal, who were arrayed as accused Nos.1 and 2 respectively.

3. The trial commenced before the learned Magistrate on 05.01.2000 as against the petitioner alone



since the 2<sup>nd</sup> accused went absconding. The case was vigorously prosecuted with the examination of 17 witnesses as PW1 to PW17 and marking 20 documents as Ext.P1 to P20 from the part of the prosecution. The accused was given opportunity for defence evidence after recording his statement under Section 313 Cr.P.C, but he did not adduce any evidence. As per the judgment dated 06.12.2003, the learned Magistrate convicted the petitioner for the commission of offence under Sections 468 and 471 I.P.C and Section 12(1)(b) of the Passport Act, 1967. He was awarded a sentence of rigorous imprisonment for three years and fine Rs.5,000/- under Section 468 I.P.C, rigorous imprisonment for three years and fine Rs.5,000/- under Section 471 I.P.C and rigorous imprisonment for two years and fine Rs.10,000/- under Section 12(1)(b) of Passport Act, 1967.

4. The learned Additional Sessions Judge-II, Kozhikode who considered Crl.A.No.794/2003 filed on 01.01.2004, against the above verdict, confirmed the conviction of the petitioner for the offence under Section



468 I.P.C and Section 12(1)(b) of the Passport Act, 1967 as per the judgment delivered on 31.03.2006. However, the petitioner was acquitted of the charge under Section 471 I.P.C, and the sentence of imprisonment awarded by the trial court under Section 468 I.P.C and Section 12(1)(b) of the Passport Act, 1967 were reduced to rigorous imprisonment for two years and simple imprisonment for one year respectively. The fine imposed by the trial court under Section 468 I.P.C was retained by the appellate court, but the fine imposed under Section 12(1)(b) of the Passport Act was scrapped.

5. It is aggrieved by the above conviction and sentence imposed by the appellate court that the petitioner is here with this revision petition.

6. Heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

7. As already stated above, the petitioner was convicted and sentenced in the trial conducted before the Judicial First Class Magistrate Court, Kozhikode for the commission of offence on 24.07.1991 under Section 468



and 471 I.P.C and Section 12(1)(b) of the Passport Act, 1967, while he was an adolescent aged 17 years, three months and 19 days. The trial, conviction and sentence were resorted to because of the reason that as per Section 2(h) of the Juvenile Justice Act, 1986 prevailing during the time of commission of crime, a boy who has not attained the age of 16 years and a girl who has not attained the age of 18 years were alone treated as juvenile. However, during the course of trial, the Juvenile Justice (Care and Protection of Children) Act, 2000 came into force on 01.04.2001. At the time when the learned Magistrate rendered the judgment on 06.12.2003, convicting and sentencing the petitioner, the law relating to juveniles which prevailed, was the Juvenile Justice (Care and Protection of Children) Act, 2000. Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'the 2000 Act') defines juvenile or child as follows:

*"Juvenile or child means a person who has not completed eighteenth year of age".*



Similarly, Section 2(I) of the 2000 Act reads "*juvenile in conflict with law means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence*". The procedure to be followed in respect of pending cases at the time of commencement of the Juvenile Justice (Care and Protection of Children) Act, 2000 was dealt with under Section 20 of the said Act which reads as follows:

*"20. Special provision in respect of pending cases.- Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence."*

8. Thus, at the time when the learned Magistrate rendered the verdict in C.C.No.561/1998 on 06.12.2003,



Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000 required him to forward the petitioner to Juvenile Justice Board instead of passing any sentence, if the definition of 'juvenile' as provided under Section 2(k) of the 2000 Act was relied on for the applicability of Section 20 of the said Act. On the other hand, there was no need to resort to the above procedure if the definition of 'juvenile' as given under Section 2(h) of the Juvenile Justice Act, 1986 was taken into account for reckoning the juvenility of the petitioner. There was lack of clarity during that time as to whether, for pending cases, the term 'juvenile' referred under Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000 has to be taken as a person who has not completed 18<sup>th</sup> year of age as defined under Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 or, to the contrary, it shall be taken as a boy who has not attained the age of 16 years as defined under Section 2(h) of the Juvenile Justice Act, 1986. The issue got further complicated with the conflicting decisions of the Apex





Court in **Arnit Das v. State of Bihar : (2000) 5 SCC 488** and **Umesh Chandra v. State of Rajasthan : (1982) 2 SCC 202** about the relevant time of reckoning the juvenility of an offender. The confusion on the above point of law was set at rest by the decision of the Constitution Bench of the Hon'ble Supreme Court in **Pratap Singh v. State of Jharkhand and Another : (2005) 3 SCC 551**. In the aforesaid decision, the Apex Court formulated two points namely:

(a) Whether the date of occurrence will be the reckoning date for determining the age of the alleged offender as juvenile offender or the date when he is produced in the court/ competent authority.

(b) Whether the Act of 2000 will be applicable in the case of a proceeding initiated under the 1986 Act and pending when the Act of 2000 was enforced with effect from 01.04.2001.

9. On the second question, the Constitution Bench held that the 2000 Act would be applicable in a pending proceeding instituted under the 1986 Act in any court or



authority, if the person had not completed eighteen years of age as on 1<sup>st</sup> April 2001, when the 2000 Act came into force. On the first question, it was held that the reckoning date for the determination of the age of the juvenile is the date of the offence and not the date when he is produced before the authority or in a court. Consequently, the 2000 Act would have prospective effect and not retrospective effect except in cases where the person had not completed the age of eighteen years on the date of commencement of the 2000 Act. Other pending cases would be governed by the provisions of the 1986 Act.

10. Going by the above dictum of the Hon'ble Supreme Court, Juvenile Justice (Care and Protection of Children) Act, 2000 was not applicable for the case of the petitioner since, on the relevant day, i.e. on 01.04.2001, the petitioner was aged 27 years. Probably, it might be due to the said reason that the learned Magistrate and the learned Additional Sessions Judge did not find it necessary to forward the petitioner to Juvenile Justice Board without passing any sentence, as per the



requirement of Section 20 of Juvenile Justice (Care and Protection of Children) Act, 2000.

11. Subsequent to the decision of the Constitution Bench in **Pratap Singh** (supra), several amendments were brought to the Juvenile Justice (Care and Protection of Children) Act, 2000 by virtue of Act No.33 of 2006. The relevant amendment which would affect the fate of the present case is the one made to Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000 by incorporating a proviso and explanation to that Section. The explanation added to Section 20 by way of Act No.33 of 2006 which came into force on 22.08.2006 is as follows:

*"Explanation.—In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (1) of Section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed."*



12. Thus, as per the above explanation added to Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000 by way of amendment, the determination of juvenility of a juvenile in a pending case at the time of commencement of 2000 Act shall be in terms of Section 2(l) of the Juvenile Justice (Care and Protection of Children) Act, 2000, even if the juvenile ceases to be so on or before the date of commencement of the said Act, and the provisions of the said Act shall apply as if the said provisions had been in force, for all purposes and at all material time when the alleged offence was committed. Going by the tenor of the above amendment incorporated to Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000, which came into force on 22.08.2006, for the purpose of the offence involved in this case, petitioner herein ought to have been considered as a juvenile since as per Section 2(l) of the said Act "a juvenile in conflict with law" means a juvenile who is alleged to have committed an offence and has not completed 18<sup>th</sup> year of age as on the



date of commission of such offence. That being so, as of now, Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000 as it existed after the amendment made by Act No.33 of 2006, is applicable to the petitioner unless there is any provision in the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short referred as '2015 Act' hereafter) repugnant to its applicability.

13. Section 25 of the Juvenile Justice (Care and Protection of Children) Act, 2015, which deals with the law applicable to pending proceedings is extracted as follows :

*"Notwithstanding anything contained in this Act, all proceedings in respect of a child alleged or found to be in conflict with law pending before any Board or court on the date of commencement of this Act, shall be continued in that Board or Court as if this Act had not been enacted."*

14. S.25 is a non-obstante clause which applies to all proceedings in respect of a child (The expression 'child' as per clause (12) to S.2 of the 2015 Act reads – 'a person who has not completed eighteen years of age'.) alleged



or found to be in conflict with law pending before any Board or court on the date of commencement of the 2015 Act, that is, 31<sup>st</sup> December 2015. It states that the pending proceedings shall be continued in that Board or court as if the 2015 Act had not been passed. In *Akhtari Bi v. State of M.P.*, (2001) 4 SCC 355, it was observed that the right to appeal being a statutory right, the trial court's verdict does not attain finality during the pendency of the appeal and for that purpose the trial is deemed to be continuing despite conviction. Thus, the use of the word 'any' before the Board or Court in Section 25 of the 2015 Act, would mean and include any Court including the appellate court or a court before which the revision petition is pending. This is also apparent from the use of the words 'a child alleged or found to be in conflict with law'. The word 'found' is used in past-tense and would apply in cases where an order/judgment has been passed. The word 'alleged' would refer to those proceedings where no final order has been passed and the matter is sub-judice. Further, Section 25 of the 2015



Act applies to proceedings before the Board or the Court and as noticed above, it would include any court, including the appellate court or the court where the revision petition is pending. Since the Act of 2015 protects and affirms the application of the 2000 Act to all pending proceedings, the law relating juveniles which governs the present revision which has been pending on 31.12.2015, the date of commencement of 2015 Act, is the Juvenile Justice (Care and Protection of Children) Act, 2000.

15. Therefore, as the matter stands now, it is incumbent upon this Court to take recourse to Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000, as it existed after the amendment made to it by Act No.33 of 2006, and to forward the petitioner to the Juvenile Justice Board for passing appropriate orders, if this Court concurs with the findings of the Additional Sessions Court-II, Kozhikode, convicting the petitioner for the commission of offence under Section 468 I.P.C and Section 12(1)(b) of the Passports Act, 1967. I am



fortified by the dictum laid down by the Hon'ble Supreme Court in **Satya Deo @ Bhoorey v. State of Uttar Pradesh [AIR 2020 SC 4826]** in arriving at the above conclusion.

16. A perusal of the case records would reveal that the prosecution has meticulously conducted the case before the trial court and brought on record all necessary evidence pointing to the forgery committed by the petitioner, by correcting his date of birth in the relevant page of admission register (Ext.P4) as 05.04.1970 instead of 05.04.1974, which was his actual date of birth. The evidence adduced before the learned Magistrate would also convincingly establish the fact that making use of the above forged record, the petitioner had applied for passport through an agency, which routed the above application to the passport authority through another travel agency. There is absolutely nothing which the petitioner could bring out to show that there was any manifest illegality, impropriety or error committed by the courts below in relying on the above evidence.





17. Relying on the decision of this Court in **Shereef v. State of Kerala & Ors. [2019 (1) KHC 702]**, the learned counsel for the petitioner argued that the appellate court went wrong in resorting to simultaneous conviction of the petitioner for the commission of offence under Section 468 I.P.C. and Section 12(1)(b) of the Passports Act, 1967. It is pointed out, on the basis of the aforesaid decision, that since a specific penal provision enacted under the Passports Act had been invoked, and the accused convicted for the commission of the said offence, he ought to have been spared of a simultaneous conviction for the commission of the offence under Section 468 I.P.C. I find no merit in the above argument since the offence under Section 468 I.P.C is distinct in its nature and implications from the offence under Section 12(1)(b) of the Passports Act, 1967. The decision of this Court in **Shereef** (supra) has been rendered in a totally different context, where the allegation against the accused therein was that he obtained passport making use of the school certificate of his brother. As far as the



present case is concerned, the forgery attributed to the petitioner is his act of manipulating the certified copy of his admission register by changing his date of birth as 05.04.1970 instead of 05.04.1974. The above offence is totally at variance from Section 12(1)(b) of the Passports Act, 1967, which deals with knowingly furnishing false information or suppressing material information with a view to obtaining a passport or travel document. To put it otherwise, the act of the petitioner committing forgery by making corrections in the certified copy of his admission register is one thing, which is distinct from his subsequent act of knowingly furnishing false information before the Passport authority making use of the above forged document. Therefore, there is absolutely no merit in the argument advanced by the learned counsel for the petitioner on that score.

18. Having regard to the facts and circumstances of the case, as brought out from the records, there is absolutely no reason to interfere with the findings of the appellate court in Crl.Appeal No.794/2003, convicting the



petitioner for the commission of offence under Section 468 I.P.C and Section 12(1)(b) of the Passports Act, 1967.

19. As regards the further course to be followed, Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000 has to be necessarily adopted by this Court, for the reasons which I have discussed in paragraph Nos.12 to 15 aforesaid. As per the above provision, the petitioner has to be forwarded to the Juvenile Justice Board, instead of passing any sentence, and the said Board shall pass orders, in accordance with the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000.

20. Before parting with this matter upon an observation and direction, as stated above, it seems to be absolutely necessary to state here about the prudent course, which the Juvenile Justice Board is expected to follow when the petitioner aged about 50 years, who might be perhaps a grandfather now, is brought before the said Board, after 32 years of the date of commission of the crime.



21. Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000 deals with the various orders, which the Juvenile Justice Board is to pass, when it is found on enquiry that a juvenile has committed an offence. All the above directions incorporated under the aforesaid Section are apparently designed for a juvenile, as defined under the said Act, and not for a middle-aged man like the present petitioner. Yet it appears that clause (c) and clause (d) of Sub-section 1 of Section 15, which deal with performance of community service and payment of fine respectively, would be suitable penalty for the petitioner herein. Anyhow, it is left open to the discretion and wisdom of the Juvenile Justice Board to decide.

In the result, the revision is allowed in part, as follows :

- (i) While confirming the conviction of the petitioner for the commission of offence under Section 468 I.P.C and Section 12(1)(b) of the Passports Act, the sentence imposed by the appellate court is hereby set aside.



- (ii) The petitioner is directed to appear before the Juvenile Justice Board, Kozhikode on or before 31.01.2024, for abiding by the orders to be passed by the said Board under Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000.
- (iii) The Juvenile Justice Board, Kozhikode shall pass appropriate prudent orders under Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000, upon the petitioner when he appears in compliance with the above direction.
- (iv) In the event of failure of the petitioner to appear before the Juvenile Justice Board, Kozhikode, the Board shall pass the necessary orders for procuring his presence, and take recourse to appropriate further procedures, as envisaged under Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000.



Transmit a copy of this order, along with case records to the Juvenile Justice Board, Kozhikode for further proceedings.

(sd/-)

**G.GIRISH, JUDGE**

jsr